



APPROVED MINUTES
CITY OF SCOTTSDALE
CHARTER REVIEW TASK FORCE

MONDAY, SEPTEMBER 14, 2009

CITY HALL KIVA
3939 N. DRINKWATER BLVD.
SCOTTSDALE, AZ 85251

PRESENT: Steven J. Twist, Chair
Susan Bitter Smith
Jim Derouin
Cindi Eberhardt
Alan Kaufman
Charlie Smith
Lisa Johnson Stone

STAFF: Brent Stockwell, Senior Advisor
Sherry Scott, Deputy City Attorney
Carolyn Jagger, City Clerk

Call to Order / Roll Call

Chairman Twist called the Charter Review Task Force regular meeting to order at 5:03 P.M. Roll call confirmed the presence of Task Force members as noted. (Due to technical difficulties, the recording began at 5:20 p.m.)

1. Presentations by Invited Guests regarding the History, Role and Purpose of City Charters, City Charter Review Processes, and Possible Amendments to the Scottsdale City Charter

Cathy Connolly, former Executive Director of the League of Arizona Cities and Towns, presented information about charter history in Arizona, and how elections have been handled and interpreted historically. She explained the role Maxwell vs. Fleming (1946) had in determining that votes equal ballots and that three charter cities in Arizona have attempted to address this issue by adding a qualifier which states that the candidate must receive a majority of the votes cast "for that office." The cities that have added this language to their charters are Mesa and Phoenix (elect council members by districts) and Prescott (elects council members at large system). Ms. Connolly ended her presentation by commenting on some observations she had from watching the Task Force's first meeting.

Chairman Twist thanked her for her comments and extended an invitation to join any of their future meetings.

Jim Derouin asked for clarification on the ballot vs. voting issue by restated Ms. Connolly's information that said that State law says votes, the Phoenix Charter says votes, but the Maxwell vs. Fleming case of 1946, found that votes meant ballots. He stated that some other charter cities have tried to make votes mean votes by including language that modifies votes cast by inserting the words "in that candidate's race." He asked Ms. Connolly if the League of Arizona Cities and Towns has an opinion on how to create charter language to accomplish counting votes as compared to ballots for a particular race. Ms. Connolly replied that the League did not make a recommendation here.

There was continued discussion on election article language and Senate Bill 1123, which passed during the last legislative session, was discussed as well. There was clarification of the election amendment approval process through the U.S. Justice Department, Attorney General's office, and the Governor's office. Ms. Connolly stated that the Justice Department only looks at the Federal Voting Rights Act implications, not state law. She recommends submitting the process to the State Attorney General's office and the Justice Department simultaneously, adding that the language needs to be pre-cleared with the Justice Department before the election.

2. Public Comment:

Mr. Gregory Wirth expressed his concern about adding new language in the Charter and asked, as a citizen, that the Task Force look for the most objective language possible in making changes in the City's Charter.

3. Discussion and possible action regarding recommendations to the City Council regarding possible amendments to the Scottsdale City Charter

Chairman Twist said that the Task Force might be better prepared to vote on different options if they don't rush themselves. He asked that they take time to discuss items thoroughly and allow everyone a chance to speak, as well as hear comments from the public. Chairman Twist stated that there seems to be two important, overriding goals, that 1) whatever our election rules are that they be clear, easily stated and well known far in advance of the next election so everyone knows the rules and can operate by those rules, and that 2) we try to make elections consequential, in the sense that voters have an expectation when they go to the polls and the results are announced the next day, they can know who the winners and losers are.

Additionally, Chairman Twist identified a number of options available to the Task Force including, an option to do nothing and recommend not changing the rules; an option to change the rules so that instead of counting ballots, we count votes, noting that this option has some benefits and some drawbacks; an option of modifying the ballot counting system but not going to the vote counting system; the Flagstaff alternative, which Charlie Smith has offered to the group for consideration; and other alternatives that members may raise.

Carolyn Jagger, City Clerk, explained that after the last general election, held in September 2008, the Clerk's office had extensive discussions with the County Recorder's Office to try and determine a way to know how many people from Scottsdale actually voted in the Scottsdale portion of a consolidated ballot. Ms. Jagger explained there was a primary going on that time

and Scottsdale's portion of the election was consolidated onto partisan ballots that were widely distributed. The result was that it became difficult to determine the actual ballots cast, and they were unable to determine how many Scottsdale people voted. There was further discussion of the records available from the County Recorder's Office, as well as their process, capabilities, and responses to Scottsdale's vote count issues last year.

Jim Derouin reviewed and briefly summarized Options A through E. He asked if the members could advance to Options A, C, D, & E tonight and leave the more controversial Option B until the next meeting, noting this would allow them to get some work done tonight and leave the more challenging option for next week.

Susan Bitter Smith stated that she thought Option C is controversial, as well, explaining that the article was moved to front of their agenda because of timing perspectives. She asked members to consider addressing all charter provisions that are election-related and their respective timing considerations.

Chairman Twist asked Ms. Jagger to review the timing for election issues and Mr. Smith added that he wondered what else might likely be on a March Ballot. Chairman Twist said his understanding was the only thing he had heard of was the bed tax issue. He stated that at the Task Force had learned holding an election in March would cost the City about \$250,000.

Carolyn Jagger, City Clerk, gave an overview of the election timeline handout, as it was given to the Task Force members. She noted that Council is scheduled to discuss the bed tax issue on or around Oct 13 and that they are having a joint work study session to consider if they want this question on the March 9, 2010 ballot or some later date in the future. She explained it is her understanding that Council is looking to have changes in place for the first election on August 24, 2010 noting that this is an ambitious schedule. She explained that the City Clerk's office has some strategies to offer the Task Force if it's something they want to consider and explained it's important to stress that it's not about when the election is, but rather it's about when we start telling the public we are going to have an election, what we tell them we will be doing in that election, and what it will be called. She emphasized that it will be important to get that education piece out to the public to eliminate voter confusion.

Lisa Johnson Stone remarked that the gender reference throughout the City's Charter was not neutral. References to "he" throughout the document need to be addressed. There was extensive discussion on creating gender neutrality in the City's Charter and input from Sherry Scott, Deputy City Attorney, on how the Task Force, in conjunction with the City Council, could most easily accomplish this gender neutral modification to the City's Charter. Ms. Scott explained that it will require ballot language and an election to make this change permanent. Ms. Scott said she would research the issue and bring her findings back for further discussion at the Task Force's next meeting.

Chairman Twist stated that they would now address and discuss Option A. Ms. Jagger clarified that these changes would amend Article Nine, but also change language in Article Two. Ms. Stone asked for a correction of the typo in Section Four, where it says "authorized by state law" and should read "state" law.

MOTION:

JIM DEROUIN MOVED THAT "OPTION A" PROVIDING FOR PRIMARY AND GENERAL ELECTIONS, IN PLACE OF GENERAL AND RUN-OFF ELECTIONS, BE APPROVED WITH THE CORRECTION, AS NOTED, CINDI EBERHARDT SECONDED.

Mr. Smith said that his assumption was that the process would allow the Task Force to identify a number of amendments that can be revisited before a final recommendation is made to the City Council. Chairman Twist said the Task Force can vote now to make the recommendation to Council, but can revisit it later, if needed. Ms. Eberhardt asked that the Task Force work to remember and track changes they make as they go forward to study other articles. It will be important to cumulatively retain decisions made in their future work.

VOTE:

MOTION PASSED 7-0.

Cindi Eberhardt asked that language be created on the Scottsdale portion of the ballot show that the Scottsdale portion be identified as being its own election section and clearly stated as being "non partisan." Ms. Jagger explained that Scottsdale elections are non-partisan. She clarified that going forward, we will always know who in Scottsdale received a ballot and how many people cast them. What we won't know is how many of these voters actually cast some kind of a vote that only had to do with Scottsdale. Ballots are labeled as Scottsdale elections but there is no way to do the tabulations.

MOTION AND VOTE:

CHARLIE SMITH MOVED THAT "OPTION D" RELATING TO THE METHOD FOR PROVIDING NOTICE OF A SPECIAL ELECTION BE APPROVED. SUSAN BITTER SMITH SECONDED.

MOTION PASSED 7-0.

MOTION:

JIM DEROUIN MOVED THAT "OPTION E" CLARIFYING THE LANGUAGE REGARDING INITIATIVE MEASURES BE APPROVED. CHARLIE SMITH SECONDED.

Sherry Scott, Deputy City Attorney, offered further explanation to clarify the proposed amendment and further discussion took place on whether some of the specific language removed should still remain included. It was agreed that the language, as proposed, clarified the issue and was sufficient.

VOTE:

MOTION PASSED 7-0.

MOTION:

JIM DEROUIN MOVED THAT "OPTION C" PROVIDING FOR THE ABILITY TO FOREGO A PRIMARY ELECTION IF NO MORE THAN TWO CANDIDATES FILE NOMINATING PETITIONS FOR EACH VACANCY IN THAT OFFICE. LISA JOHNSON STONE SECONDED.

Charlie Smith clarified that this amendment would be added to the "Majority to Elect" section. If there were two candidates who filed for mayor, those candidates would go directly to the General Election (no primary). This language was taken from the Flagstaff City Charter. Mr. Smith explained that the reason for proposing this alternative is that while the first election requires a majority of ballots to be elected, the second election says that the person with the highest number of votes is elected. He further stated that if there are only two candidates, then you only need to have one election.

Alan Kaufman brought up the issue of write-in candidates and asked that the Task Force consider how write-in provisions will impact change. Ms. Jagger clarified that the rules are different for write-ins in the first and second elections, noting that write-ins would still be permitted at the general election, if this proposal is adopted.

Susan Bitter Smith stated that Option C doesn't preclude write in candidates, but if Option C is adopted, it does address the problem Scottsdale experienced in the last election and precludes it from happening again in the future.

Chairman Twist remarked that it wouldn't solve the problem in a multi-candidate council or mayor's race. He asked Ms. Connolly about Flagstaff's experience and she replied that if often meant that Flagstaff did not have to hold a primary election for mayor, but stated that they've always had to have a primary for council positions.

VOTE: MOTION PASSED 7-0.

Chairman Twist asked if the Task Force wanted to defer the remainder of their discussion on elections issues to the next meeting. It was agreed that the Task Force would continue to discuss for about ten additional minutes and continue the discussion at the next meeting.

Susan Bitter Smith expressed the need to talk about district representation for Council members and thought that if the majority of the Task Force wanted to discuss it, it should be discussed now. Mr. Smith said that all election items should be discussed now to make the March deadline. There was further discussion on this issue and the members felt that district representation could be discussed more completely at the meeting scheduled to discuss Article Two.

4. Review, discuss, and possible amend draft agenda for September 28, 2009 meeting.

The Task Force expressed their desire to continue to hold meetings in the City Hall Kiva Forum and televise the meetings.

Adjournment

With no further business to discuss, the meeting was adjourned at 7:19 P.M.

SUBMITTED BY:
Linda Pellegrini
Executive Secretary

REVIEWED BY:
Brent Stockwell
Senior Advisor

Officially approved by the Charter Review Task Force on October 5, 2009